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FISCAL IMPACT STATEMENT

LS 6904

BILL NUMBER: HB 1487

NOTE PREPARED: Jan 23, 2015

BILL AMENDED:

SUBJECT: Medical Marijuana.

FIRST AUTHOR: Rep. Errington

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: The bill defines "qualifying patient" and permits a qualifying patient to use medical cannabis under certain circumstances.

It requires the State Department of Health (ISDH) to adopt rules before July 1, 2016, concerning the use, distribution, cultivation, production, and testing of medical cannabis.

The bill provides immunity for physicians who recommend the medical use of cannabis.

It makes conforming amendments.

Effective Date: July 1, 2015.

Summary of NET State Impact: The ISDH is to issue and regulate medical marijuana licenses. Programs in states that allow dispensaries have costs ranging from \$470,000 and \$600,000, (Arizona is excluded from this group as an outlier). However, the actual costs will depend on the number of licenses issued, the procedures developed, and the amount of oversight needed. Fee revenue may provide an offset to the costs, but the fees may not exceed the ISDH's costs under the bill.

It is possible, but not certain, that there may be conflicts between the employment provisions of the bill and the federal Drug-Free Workplace Act. The Drug-Free Workplace Act requires that an employer maintain a workplace where employees are prohibited from using controlled substances (including cannabis), as defined under federal law, whereas the bill precludes an employee from being impaired while on the employer's

premises.

Provisions concerning civil liability and the defenses to prosecution and criminal penalties could preclude the collection of revenue from court fees that are deposited in the state General Fund or for criminal penalties that are deposited in the Common School Fund, as well as the number of offenders potentially committed to a state correctional facility.

Explanation of State Expenditures: Summary: The Indiana State Department of Health would adopt rules and issue several types of licenses connected to the cultivation, dispensing, and use of marijuana. The ISDH may charge fees for the licenses, but may not exceed the cost of services provided, including costs of oversight, inspection, and enforcement. The costs of the program are indeterminate and dependant on the rules that the ISDH adopts and the number of licensees. Based on expenditures in other states, the program may cost about \$500,000.

The bill affects the state as an employer. The state and state agencies are required to comply with the federal Drug-Free Workplace Act. As well, the U.S. Department of Transportation mandates drug testing for certain individuals in the transportation industry, some of whom may be state employees.

If fewer individuals are convicted of the offenses because of the exemptions permitted in the bill, fine revenue and incarceration would decrease. While the underlying crimes to which the exemptions apply are only infractions and misdemeanors, the criminal penalty may be increased to a Level 5 or Level 6 felony based on the prior convictions of the individual and the amount of the drug involved. A felony conviction may be punished with a term of incarceration in a state facility.

Marijuana is federally classified as a Schedule I controlled drug with no medically indicated uses. Although 23 states have medical marijuana programs, future federal responses to state initiatives is unknown.

Additional Information -

Licenses: The bill requires the ISDH to adopt rules and provide for the issuance of the following identification.

Medical Use License: A medical use license may be issued to a qualifying patient or the patient's personal caregiver.

Medical Cannabis Production License: A qualifying patient or their caregiver may be issued this license to cultivate cannabis for personal use. Also, a medical cannabis production license may be issued to a medical cannabis establishment and its employees, officers, volunteers, and board members, who will be known as medical cannabis agents. Licensed medical cannabis establishments cultivate, process, manufacture, test, or dispense medical cannabis.

Laboratory: An independent testing laboratory also may be issued a medical cannabis production license. The independent testing laboratory is to be capable of determining certain chemical, pesticide, and fertilizer concentrations and identifying mold or fungus in samples.

Rules: Requirements for the rules adopted by the ISDH are specified in the statute. However, there is no limit

on the number or location of these licenses in the bill.

Also, the ISDH is to adopt rules concerning product safety standards and oversight and enforcement of product safety standards. And the ISDH is to adopt rules concerning the issuance of a medical cannabis use license to nonresident valid cardholders.

Experience in Other States: There are 23 states with medical marijuana programs; 18 states have dispensaries and 12 of those have programs that were enacted in 2013 or 2014. A dispensary program suggests a business that provides marijuana to licensed or registered individuals, while a program without dispensaries assumes the patient or a caregiver will cultivate the marijuana.

Because many programs are in the start-up phase, financial information and program reports are not available for many programs. However, for those states that have reports, the annual program expenditures are between \$470,000 and \$600,000. Many programs are self-funding, and some are required to match license fees with program costs. In Colorado, for example, the fees have been reduced over time, from \$110 to \$15. The program is limited to recovering its costs, which are covered in the lower fees. The fees are reviewed each year and the cost of a license adjusted.

One-time start-up costs to purchase equipment for the issuance of identification cards and provide office equipment and computer access are indeterminate. Maryland had an appropriation of \$125,000 to begin its program, but anticipates needing \$3 M to \$4 M to oversee the quality and quantity of production. New Jersey is also considering increasing its program's appropriation from \$784,000 to \$1.6 M in order to better develop production of medical marijuana. Hawaii, which does not have dispensaries, is the only state with published start-up costs of \$415,000.

State	Patients	Caregivers	Dispensaries/ Limits	Expenditures
Alaska*	917			\$22,277
Arizona	51,783	591	85 / Up to 126	7,415,594
Colorado	117,239		? / 470	5,262,000
Hawaii*	11,695			410,000
Maine	572	575	6 / 8	466,028
Michigan*	63,628			4,052,782
Montana*	7,150			NA
Nevada	7,491	463	? / 66	377,000
New Jersey	1,672	197	1 / 6	1,600,000
New Mexico	9,760		23 / TBD	650,402
Oregon	69,429	34,624	213 / No limit	2,650,000
Rhode Island	4,849	3,415	2 / 3	589,086

Sources: Various, see below.

*State does not allow dispensaries.

Employment: The federal Drug-Free Workplace Act requires some federal contractors and all federal grantees to agree that they will provide drug-free workplaces. The state and state agencies as well as local

units of government and school corporations, as grantees, are required to follow the requirements of the Act. The Act requires certification that the grantee is following the requirements of the Act, but the Act does not authorize the drug testing of employees.

Noncompliance with the Act may lead to sanctions which include withholding payments under the grant, termination of the grant, or debarment of the grantee. Sanctions are left to the discretion of the federal agency awarding the grant.

In contrast, the U.S. Department of Transportation (USDOT) requires mandatory drug testing of certain employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries. Some examples of covered employees include (but are not limited to) flight crews, flight attendants, flight instructors, bus drivers, transit mechanics, railroad dispatchers, pipeline operators, and holders of commercial drivers licenses who operate certain types of vehicles or transport certain types of materials. In this case, this required drug testing may supercede allowances made under the employment provisions of the bill.

Covered employees who undergo mandatory USDOT drug testing that test positive, refuse a test, or otherwise violate USDOT drug and alcohol rules are immediately removed from duty and must undergo an evaluation and prescribed treatment prior to being reinstated (after a negative re-test). Upon reinstatement, employees will be required to undergo testing at least 6 times during the first 12 months of active service, with the possibility of more unannounced testing for up to 5 years.

Exemption of Criminal Penalties: If fewer individuals are convicted of one of the drug crimes that may be charged as a Level 5 or Level 6 felony based on the criminal history or amount of drug possessed, there would be fewer incarcerations. The reduction in incarceration based on the exemptions in the bill is indeterminate, but expected to be minimal.

Explanation of State Revenues: Summary: Revenue to the state General Fund will increase from fees charged for licenses by the ISDH and from potential sales taxes collected. The amount of these increases is indeterminate and will be based on the rules adopted by the ISDH, the program costs, and the number of sales that occur.

The bill potentially reduces the amount of court fees received from liability cases and court fees and criminal fines received from offenders of marijuana crimes.

Additional Information -

Fees: The bill requires that fees not exceed program costs, but allows the ISDH to adopt different fees for the different types of licenses.

Other States: The fee or proposed fee schedules in other states indicate that in general a patient or caregiver license or registration is \$100 or less, and need-based discounts are given to patients in most states.

Dispensaries or growers pay substantially more to be either licensed or registered. Application fees range from \$250 to \$31,500, and the renewal or annual fees range from \$1,000 to \$40,000. Many states place limits on the number of dispensaries or growers, which seems to increase license or registration fee.

Sales Taxes: Some states with medical marijuana programs collect sales tax at rates ranging from 4% to 7%. A sales tax bulletin from the Indiana Department of Revenue indicates that sales of drugs that have been prescribed and filled by a registered pharmacist or licensed practitioner are exempted from sales tax. If state sales tax were to apply to sales by a licensed medical cannabis establishment, an estimate of the sales tax collections is indeterminate, but would be based on the number of people who qualify for a medical cannabis use license and whether they purchase or cultivate their own medical marijuana.

Estimates and actual sales tax collected in other states indicate that sales tax revenue from medical marijuana ranges from an estimated \$500,000 in Maine with 8 dispensaries to \$58 M to \$105 M in California where there are between 500 and 1,000 dispensaries. (Maine has a sales tax rate of 5.5%. California levies a 7.5% state sales tax, in addition to local sales taxes ranging from 0% to 2.5%.)

Criminal Penalties: The bill provides a defense to an action or prosecution for the following crimes that the person is a cardholder with an authorized use:

1. Dealing in paraphernalia, a Class A infraction or a Class A misdemeanor.
2. Dealing in marijuana, hash oil, hashish, or salvia, a Class A misdemeanor.
3. Possession of marijuana, hash oil, hashish, or salvia, a Class B misdemeanor.

The penalty of these crimes may be enhanced to a Level 6 or for some a Level 5 felony.

If individuals are not convicted, revenue deposited in the Common School Fund from criminal fines would decrease. Less revenue from a civil penalty would reduce funds deposited in the state General Fund. The maximum fine for a Level 5 or Level 6 felony is \$10,000, a Class A misdemeanor is \$5,000, a Class B misdemeanor is \$1,000, and the maximum civil penalty for a Class A infraction is \$10,000.

Court Fees: The bill provides certain civil immunities for physicians concerning medical marijuana. Revenue to the state General Fund may decrease, if civil actions are not filed and court fees awarded. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the State User Fee Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

For criminal penalties, the reduction in court fees would be as follows. If the case is filed in a circuit or superior court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the automated record keeping fee (\$5), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

Explanation of Local Expenditures: *Employment:* The bill affects the local units, including school corporations, as employers. These agencies, if they are grantees of certain types of federal grants, are required to comply with the federal Drug-Free Workplace Act. As well, the U.S. Department of

Transportation mandates drug testing for certain individuals in the transportation industry, some of which may be local government employees.

Explanation of Local Revenues: *Court Fees:* When civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds. The document storage fee (\$2) is deposited into the clerk record perpetuation fund. The following fees are deposited into the general fund of the county in which the court is located: Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal. A service fee (\$10) is collected from the filing party for each defendant beyond the first cited in the lawsuit.

If additional criminal court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

State Agencies Affected: ISDH, State.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources:

<http://www.mpp.org/assets/pdfs/library/State-Medical-Marijuana-Programs-Financial-Information.pdf>,
<http://www.leg.state.vt.us/jfo/reports/2012-02%20Medical%20Marijuana%20Fee%20and%20Tax%20Report.pdf>,
http://www.governing.com/templates/gov_print_article?id=275343151,
<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>,
<http://files.hawaii.gov/auditor/Reports/2014/14-12.pdf>,
<http://www.health.ri.gov/publications/programreports/MedicalMarijuana2013.pdf>,
https://www.colorado.gov/pacific/sites/default/files/CHED_MMJ_06_2014_MMR_report.pdf,
U.S. Department of Labor, Drug Free Workplace Advisor webpage,
<http://www.dol.gov/elaws/asp/drugfree/howto.htm>,
http://www.ows.doleta.gov/dmstree/teins/teins_pre93/teins_15-90.htm;
U.S. Department of Transportation, Office of Drug & Alcohol Policy & Compliance,
<http://www.dot.gov/odapc>,
<http://www.dot.gov/sites/dot.gov/files/docs/ODAPC%20EmployeeHandbook%20En.pdf>;
<http://www.oregon.gov/oha/mmj/Pages/index.aspx>.

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